

United States District Court  
Central District of California

AFFELD GRIVAKES LLP,  
Plaintiff,

v.

DAVID SEYDE; BRIAN KENNEDY;  
EDGE OUTDOOR ADVERTISING,  
LLC; EDGE OUTDOOR MEDIA, LLC;  
ZOOMKUBE, LLC; and KENNEDY  
OUTDOOR ADVERTISING, LLC,  
Defendants.

Case № 2:17-cv-04098-ODW (JPR)

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS AS UNOPPOSED [11]**

Plaintiff Affeld Grivakes LLP filed this case in state court on December 15, 2016, asserting causes of action for breach of contract, quantum meruit, violations of the Racketeer Influenced and Corrupt Organizations Act, fraud, theft of labor, and rescission. (Not. of Removal Ex. 1, ECF No. 1.) On June 1, 2017, Defendants removed the action to this Court. (*Id.*) Then, on June 22, 2017, Defendants filed a motion to dismiss for failure to state a claim on which relief can be granted. (ECF No. 11.) The motion noticed a hearing for July 24, 2017. (*Id.*) Plaintiff's opposition to the motion to dismiss was due on July 3, 2017. *See* C.D. Cal. L.R. 7-9. However, to date, the Court has not received any opposition.

Local Rule 7-12 allows the Court to grant motions as unopposed in the event that a timely opposition is not filed. C.D. Cal. L.R. 7-12; *Ghazali v. Moran*, 46 F.3d

1 52, 53 (9th Cir. 1995) (affirming dismissal on the basis of unopposed motion where  
2 local rule permitted such a dismissal). In determining whether to grant an unopposed  
3 motion courts weigh the following factors: “(1) the public’s interest in expeditious  
4 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
5 prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
6 merits; and (5) the availability of less drastic sanctions.” *Ghazali*, 46 F.3d at 53  
7 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). The Ninth  
8 Circuit has recognized that the first and fourth factors cut in opposite directions. *See*  
9 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (first factor always  
10 weighs in favor of dismissal); *Hernandez v. City of El Monte*, 138 F.3d 393, 401 (9th  
11 Cir. 1998) (fourth factor always weighs against dismissal).

12 Here, the second factor also weighs in favor of dismissal. The Court must  
13 manage its docket to ensure the efficient provision of justice. Plaintiff had notice of  
14 the motion yet failed to file a timely opposition. Further, Plaintiff has not provided  
15 any excuse for its failure to timely file an opposition. The Court cannot continue  
16 waiting for Plaintiff to take action.

17 As for the fifth factor, where the plaintiff does not oppose dismissal it is  
18 “unnecessary for the Court to consider less drastic alternatives.” *Rodriguez v.*  
19 *Nationstar Mortg. LLC*, No. 2:16-CV-5962-ODW(SK), 2016 WL 4581402, at \*1  
20 (C.D. Cal. Sept. 1, 2016).

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 Finding that the *Ghazali* factors weigh in favor of granting Defendants' motion  
2 to dismiss as unopposed, the Court **GRANTS** Defendants' motion to dismiss **WITH**  
3 **PREJUDICE**. The scheduled hearing on the motion to dismiss is hereby vacated and  
4 taken off calendar. The Clerk of Court shall close the case.

5  
6 **IT IS SO ORDERED.**

7  
8 July 11, 2017

9  
10 

11 **OTIS D. WRIGHT, II**  
12 **UNITED STATES DISTRICT JUDGE**  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28